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EASTERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

David Avila, et al
PLAINTIFFS,
vs.
NEWREZ LLC, et al,
DEFENDANTS,

Case No.: 2:24-cv-2264-TLN-CSK

**OBJECTIONS TO MAGISTRATE JUDGE’S
FINDINGS AND RECOMMENDATIONS.**

NOTICE OF APPEAL

I. OVERVIEW

Plaintiffs, proceeding pro se, initiated this action to expose a pervasive pattern of Defendant Shellpoint’s behavior—namely, the unjustifiable imposition of force-placed insurance on homes that already had adequate hazard insurance coverage. Plaintiffs have alleged, with evidence, that their hazard insurance covered the property during the entirety of the alleged legitimate loan term. Plaintiffs also presented evidence demonstrating that Shellpoint has engaged in similar conduct in other states, further suggesting a deliberate scheme to defraud borrowers. Plaintiffs, refusing to be extorted, paid the regular mortgage amount as

1 defined and permitted under federal statutes but declined to pay for the unnecessary and
2 unjustified charges stemming from the force-placed insurance.

3 Despite filing a prima facie case, Plaintiffs faced substantial procedural delays caused by
4 the Court. Plaintiffs, unlike their adversaries, do not have the luxury of being full-time
5 attorneys with access to electronic filing systems. The Court delayed ruling on Plaintiffs'
6 motion to use electronic filing for nearly seven weeks, an unwarranted postponement that
7 lacked any reasonable justification and betrayed an appearance of prejudice and bias.
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9 After surviving several bad-faith attempts by Defendant Peak to unlawfully seize the
10 property, the Court took it upon itself to dismiss the case sua sponte for lack of jurisdiction.
11 This decision ignored the fact that Defendant Peak was in default and had not raised any
12 objections on its own behalf. The Court's deliberate indifference caused irreparable harm to
13 Plaintiffs, as the property was sold out from under them—an outcome Plaintiffs sought to
14 prevent through this litigation. The Court's assertion that there was "no irreparable injury"
15 to warrant an injunction is contradicted by its own actions, which directly caused the very
16 injury Plaintiffs sought to avert.
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18 Further compounding the injustice, the Court refused to permit Plaintiffs to amend their
19 complaint, thereby denying them a fair opportunity to exercise their legal right to seek
20 redress against Defendants and halt the unlawful foreclosure. Meanwhile, Defendant Peak,
21 aware of the lawsuit, repeatedly postponed the trustee sale but refused to respond to the
22 complaint. Rather than allowing the default to proceed as the law prescribes, the Court
23 actively intervened, invoking judicial notice to sabotage the case and dismiss it unjustly—
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1 an act wholly inconsistent with the principles of neutrality and impartiality that should
2 govern judicial conduct.

3 Plaintiffs contend that the Court acted in error, exhibited bias, and failed to consider the full
4 record of evidence, including two judicial notices submitted by Plaintiffs, which were
5 ignored entirely. This dismissal reflects a broader issue of judicial inefficiency and undue
6 delay in the Eastern District of California, which has been openly acknowledged as
7 suffering from a shortage of judges. However, such institutional deficiencies cannot excuse
8 the biased and dismissive treatment of this pro se case. The Court's cherry-picking of
9 Plaintiffs' motions for temporary restraining orders and injunctions undermines the
10 fundamental principles of justice.
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12 The Court should indemnify Plaintiffs for their damages, including irreparable harm and
13 financial loss, through the bond and CUSIP number created in connection with this case.
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16 Plaintiffs David Avila and John Hayne hereby object to the Magistrate Judge's Findings
17 and Recommendations dated December 9, 2024, in their entirety, which reflect what can
18 only be described as deliberate judicial sabotage. Plaintiffs object to the denial of their
19 second Motion for Temporary Restraining Order (TRO) on the following grounds:
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- 22 1. **The Court Ignored Evidence of Irreparable Harm:** Plaintiffs demonstrated
23 irreparable harm in their filings. The loss of unique property through foreclosure and
24 sale constitutes harm that cannot be remedied through monetary compensation. The
25 Court's failure to acknowledge this is a manifest error of law and fact. Plaintiffs
26 repeatedly argued that injunctive relief was necessary to prevent the foreclosure and
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1 sale. The dismissal of the TRO, coupled with judicial inefficiency and the Court's
2 undue delay in timely addressing Plaintiffs' motions, directly caused further harm.

3 2. **Bias and Prejudice in Procedural Handling:** The Court's prolonged delay in
4 addressing motions, refusal to grant Plaintiffs electronic filing access in a timely manner, and sua
5 sponte invocation of judicial notice all reflect an unseemly bias against pro se litigants. Plaintiffs
6 assert that undue delay by the Court in ruling on Plaintiffs' motions exacerbated the harm
7 caused. Despite filing timely motions to prevent foreclosure and providing the necessary
8 documentation, the Court failed to act with sufficient urgency, leading to the completion of the
9 trustee sale. This delay suggests judicial inefficiency, if not outright bias, against pro se litigants,
10 which deprived Plaintiffs of meaningful access to justice.
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13 Furthermore, the dismissal of Plaintiffs' TRO motion based on alleged procedural
14 deficiencies unfairly penalized Plaintiffs for minor issues that could have been resolved
15 through proper notice or clarification, particularly given their pro se status. With reckless
16 disregard of the **KEY** evidence on the record concerning the hazard insurance that has been
17 purchased on the property was deliberately ignored failing to engage with material
18 evidence central to the case.
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21 3. **Improper Dismissal Without Leave to Amend:**

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23 The Findings fail to address PLAINTIFFS' right to amend their Complaint to cure any
24 alleged deficiencies. Courts are required to grant leave to amend "when justice so
25 requires" under Fed. R. Civ. P. 15(a)(2). PLAINTIFFS requested equitable relief and
26 raised serious allegations, including violations of the Fair Debt Collection Practices Act,
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wrongful foreclosure, and other claims that warrant adjudication on the merits. Denying Plaintiffs an opportunity to amend prejudices their ability to present their case fully.

4. **Judicial Overreach:** The Court improperly intervened by taking judicial notice on its own initiative to dismiss the case, thereby usurping its role as a neutral arbiter.

5. **Failure to Address Plaintiffs' Judicial Notices:** The Court disregarded judicial notices filed by Plaintiffs,

For the foregoing reasons, Plaintiffs respectfully request that the District Court reject the Magistrate Judge's Findings and Recommendations and:

1. Vacate the dismissal and denial of Plaintiffs' TRO motion.
2. Grant Plaintiffs leave to amend their complaint.
3. Indemnify Plaintiffs for damages caused by the Court's actions, as reflected in the bond and CUSIP number associated with this case.

4. **Notice of Appeal**

This objection also serves as formal Notice of Appeal. Plaintiffs intend to appeal the denial of their TRO motion and any related adverse rulings to the United States Court of Appeals for the Ninth Circuit. The Court's dismissal of the case and subsequent actions have caused irreparable harm to Plaintiffs' rights and interests, requiring appellate review.

III CONCLUSION

1 For the reasons stated above, Plaintiffs respectfully request that the District Judge reject the
2 Magistrate Judge's Findings and Recommendations and:

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- 4 1. Reconsider and grant Plaintiffs' Motion for Temporary Restraining Order.
 - 5 2. Grant Plaintiffs leave to amend their Complaint.
 - 6 3. Allow the plaintiffs to remand the case to the state court.
 - 7 3. Disclose the CUSIP number or bond information associated with this case.
 - 8 4. Accept this filing as formal Notice of Appeal.
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13 Respectfully submitted,

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16 Respectfully submitted, 

17 David-Anthony Avila

18 Sui juris

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23 John Hayne

24 Sui juris

AVILA et al v. NEWREZ d/b/a SHELLPOINT et al

Case# 2:24-cv-2264-TLN-CSK

I, the undersigned, hereby certify that on DECEMBER 23, 2024, that a true and correct attached documents:

1. OBJECTIONS TO MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS
2. CERTIFICATE OF SERVICE


By method(s):

☒ HAND DELIVERY ☐ US Mail ☐ FAX ☐ EMAIL

Is Submitted to:

☒ ATTORNEYS OF DEFENDANTS

☒ UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA



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